

### **Remarks**

This is a Response to the Office Action mailed on March 24, 2006. Entry of this Response under 37 CFR § 1.116 and reconsideration of this application are respectfully requested.

Claims 1-17 are pending in this Application.

Claim 1 has been amended. Support for the amendment to claim 1 may be found in previously presented claim 5. No new matter has been added.

Claims 5, 7 and 11-17 have been canceled.

Applicants thank the Examiner for her courtesy in an interview conducted on May 22, 2006, the contents of which are summarized in the Interview Summary.

### **Double Patenting Rejection**

Claims 1 and 7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 and 7 of U.S. Patent No. 6,710,161 to Bardman et al. In view of the above amendments, Applicants respectfully submit that they this rejection is moot.

### **Rejections under 35 U.S.C. §102(e)**

Claims 1-2, 4-7 and 8-14 are rejected under 35 U.S.C. §102(e) as being anticipated by Bardman et al. (U.S. Patent No. 6,576,051). Applicants submit that Bardman et al. do not teach the claimed invention because Bardman et al. do not teach polymer particles having a first and second polymer with a glass transition temperature ("Tg") in the range of -60°C to 35°C.

Bardman et al. '051 discloses Comparative Examples F, G and H has two-phase polymers having Tgs of a hard polymer phase and soft polymer phase as follows: 28/7°C, 22/7°C, and 15/7°C. There is no requirement or even assumption that the two-phase polymers are prepared by aqueous emulsion polymerization of a phosphorus acid monomer at a pH of less than 2, or comprise a level of water soluble polymer having second phosphorus acid groups defined by ratios of equivalents of second phosphorus acid groups to equivalents of first phosphorus acid groups in the range of less than or equal to 1.5.

In coating compositions containing these two-phase polymers, Bardman et al. show that Comparative Examples F, G and H provide unstable aqueous dispersions (See,

Table 4.5; Col. 28, lines 3-6). These unstable examples are used by Bardman et al. to teach that one of the phases in the polymer must be hard to ensure stability and other desirable properties.

In Applicants' examples, it has been demonstrated that Applicants' invention, as claimed, produces stable compositions. (See, Examples 1 and 2). Because Bardman et al. '051 teach away from using two-phase polymer particles in which both polymer phases have a Tg below 40°C, Bardman et al. '051 cannot anticipate Applicants' invention. Thus, Applicants request this rejection be withdrawn.

Claims 1-4 and 6-7 are rejected under 35 U.S.C. §102(e) as being anticipated by Dersch et al. (U.S. Patent No. 6,492,451). In view of the incorporation of claim 5 into claim 1 and cancellation of claim 7, Applicants request this rejection be withdrawn.

Claims 1-4, 6-14 and 16-17 are rejected under 35 U.S.C. §102(e) as being anticipated by Rosano et al. (U.S. Patent No. 6,890,983). In view of the incorporation of claim 5 into claim 1 and cancellation of claim 7, Applicants request this rejection be withdrawn.

Claims 1-4, 6-12 and 14 are rejected under 35 U.S.C. §102(e) as being anticipated by Bardman et al. (U.S. Patent No. 6,710,161). In view of the incorporation of claim 5 into claim 1 and cancellation of claim 7, Applicants request this rejection be withdrawn.

Claims 1, 8 and 10-17 are rejected under 35 U.S.C. §102(b) as being anticipated by Ma et al. (U.S. Patent No. 6,247,808). In view of the incorporation of claim 5 into claim 1, Applicants request this rejection be withdrawn.

Claims 1, 6 and 8-11 are rejected under 35 U.S.C. §102(e) as being anticipated by Brown (U.S. Patent No. 7,009,006). In view of the incorporation of claim 5 into claim 1, Applicants request this rejection be withdrawn.

#### **Rejections under 35 U.S.C. §103**

Claims 1 and 7 are rejected under 35 U.S.C. §103(a) as being obvious over Bardman et al. '161. In view of the incorporation of claim 5 into claim 1 and cancellation of claim 7, Applicants request this rejection be withdrawn.

Claim 13 is rejected under 35 U.S.C. §103(a) as unpatentable over Bardman et al. '161. In view of the cancellation of claim 13, Applicants request this rejection be withdrawn.

Claims 1-3 and 7 are rejected under 35 U.S.C. §103(a) as unpatentable over EP 330246. In view of the incorporation of claim 5 into claim 1 and cancellation of claim 7, Applicants request this rejection be withdrawn.

**Conclusion**

In view of these remarks, Applicants believe that the pending claims are in condition for allowance, and early and favorable action is earnestly solicited.

This Paper is believed to be timely filed. However, if any other fees are deemed required for consideration of this Response, the Commissioner is authorized to charge such fee to Deposit Account No. 18-1850.

Respectfully submitted,

May 23, 2006

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